

Date of Decision: 12th July 1995

SPECIAL CIVIL APPLICATION NO. 807 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri B.D. Karia, Advocate, for the Petitioner

Shri V.B. Gerania, Assistant Government Pleader, for Respondent No.1

Mrs. Sudha Gangwar, Advocate, for Respondent No.2

CORAM: A.N. DIVECHA, J.
(12th July 1995)

ORAL JUDGMENT

The order passed by the learned District Judge of Amreli on 21st January 1995 below the application at Ex.4 in Election Petition No. 1 of 1994 is under challenge in this

petition under Articles 226 and 227 of the Constitution of India. By his impugned order, the learned District Judge inter alia ordered that evidence be recorded for the purpose of deciding the election petition filed by and on behalf of the present petitioner.

2. The facts giving rise to this petition move in a narrow compass. The elections to the Municipality at Amreli were held some time in December 1994. Counting of votes inter alia of Ward No. 11 took place on 22nd December 1994. It appears that the counting of the said Ward was over around 8.15 p.m. Respondent No.2 was declared elected. He was found to have secured 18 votes more than the petitioner. The petitioner thereupon applied for recounting on that very day before the Election Officer (Respondent No.1 herein). By his order passed therebelow on that very day, respondent No.1 rejected it. A copy of the petitioner's application and the order passed therebelow by respondent No. 1 on 22nd December 1994 is at Annexure A to this petition. The petitioner thereupon filed an election petition before the District Court at Amreli under sec. 14 of the Gujarat Municipalities Act, 1963 ('the Act' for brief). Its copy is at Annexure B to this petition. It came to be registered as Election Petition No.1 of 1994. In the said petition an application for interim relief for preservation of the entire record including the ballot papers till the stage of declaration of the result of Ward No. 11 was moved. It was taken on record as Ex. 4. Its copy is at Annexure C to this petition. After hearing the parties, by his order passed on 21st January 1995 below the said application at Ex. 4, the learned Judge partly accepted it but however directed recording of evidence to decide the dispute raised in the main matter. A copy of the aforesaid order passed by the learned District Judge is a part of Annexure C to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning its correctness.

3. It is difficult to agree with the submission urged before me by learned Advocate Shri Karia for the petitioner that no enquiry was necessary and the learned Judge below ought to have ordered recounting in view of sec. 14(5) of the Act. The reason therefor is quite simple. It transpires from the order passed by respondent No.1 at Annexure A to this petition that counting was done in lots of 50 votes and, according to respondent No.1, at no point of time on conclusion of counting of any lot of 50 votes, the petitioner raised any objection with respect thereto. In other words, according to the order passed by respondent No.1 at Annexure A to this petition, no error in counting of votes was pointed

out by or on behalf of the petitioner at the stage of counting of every lot of 50 votes. In his election petition at Annexure B to this petition, the petitioner has pleaded that counting was not done in lots of 50 votes but at a stretch in one lumpsum. It cannot be gainsaid that the dispute was with respect to the manner and method of counting of votes so far as Ward No.11 was concerned. There were two rival versions in that regard. The dispute in that regard would certainly involve a question of fact. It could be decided only by recording evidence. Without recording of evidence, it could not have been decided. In that view of the matter, sec. 14(5) of the Act could not have been pressed into service without enquiring into the manner and method of counting of votes qua Ward No. 11.

4. The learned Judge has rightly relied on the binding ruling of the Supreme Court in the case of S. Narayanan v. S. Semmalai reported in AIR 1980 SC 206 for the purpose of coming to the conclusion that recounting of votes cannot be ordered for mere asking. The learned Judge below has rightly refused to distinguish the aforesaid binding ruling of the Supreme Court on the ground that it was rendered in the context of the Representatives of People Act whereas the case on hand involved the enactment pertaining to municipal elections. It cannot be gainsaid that our country has adopted democratic set up based on the parliamentary system even at grass-root levels like municipalities and panchayats. The Representatives of People Act governs the process of elections for the Central and the State legislatures. The same principle for governance of the democratic set up of this country should be made applicable for elections to the elected bodies of local authorities. In that view of the matter, the aforesaid binding ruling of the Supreme Court could not have been distinguished on the ground that it pertained to the Representatives of People Act and not to the Act pertaining to municipal elections.

5. Since it is a settled principle of law that recounting could not be ordered for mere asking, no resort could have been taken to sec. 14(5) of the Act without first of all deciding the dispute regarding the manner and method of counting of votes qua Ward No. 11.

6. In view of my aforesaid discussion, I find no merit or substance in this petition. The impugned order passed by the learned Judge below calls for no interference by this court in this petition under Articles 226 and 227 of the Constitution of India.

7. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged however with no

order as to costs. Since the learned Judge ordered recording of evidence from day to day on and from 15th February 1995, it would be desirable to see that the election petition in question is disposed of as expeditiously as possible.

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